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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

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11 VINCENT MARTINEZ,
12 Plaintiff,
13 v.
14 ANDREW SAUL, Commissioner of
15 Social Security,
16 Defendant.

17 Case No.: 15-cv-1994-BTM-BGS

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19 **ORDER GRANTING MOTION FOR**
20 **ATTORNEY'S FEES PURSUANT**
21 **TO 42 U.S.C. § 406(b)**

22 **[ECF No. 17]**

23 Plaintiff's attorney, Lawrence D. Rohlffing ("Counsel"), moves for an award of
24 attorney's fees pursuant to 42 U.S.C. § 406(b). Counsel asks the Court to award
25 \$30,000.00 in attorney's fees from Plaintiff's recovery of \$173,585.00 in past-due
26 social security benefits, and to order Counsel to refund Plaintiff the \$3,414.00 in
27 fees Plaintiff has already paid under the Equal Access to Justice Act ("EAJA"). The
28 Social Security Administration Commissioner filed a brief as a "trustee" but takes
 no position on the instant motion. Plaintiff has not responded to Counsel's request.
 For the reasons set forth below, the Court **GRANTS** Counsel's motion for
 attorney's fees.

BACKGROUND

On February 18, 2016, the Court granted the parties' joint motion to voluntarily remand this action pursuant to sentence four of 42 U.S.C. § 405(g) and remanded this action for further administrative proceedings. ECF No. 12. On May 2, 2016, the Court granted the parties' joint motion for attorney's fees and costs, awarding Plaintiff \$3,414.00 in attorney's fees and expenses under the EAJA, 28 U.S.C. § 2412, and \$400.00 in costs under 28 U.S.C. § 1920. ECF No. 12.

8 On remand, the Administrative Law Judge (ALJ) found Plaintiff was disabled
9 since September 1, 2010 and awarded Plaintiff past-due disability benefits. ECF
10 No. 17-3. The Notice of Change in Benefits issued on October 6, 2018 informed
11 Plaintiff that he was entitled to monthly benefits from February 2011 onward, and
12 that \$43,396.25 of those past-due benefits would be withheld in the event that
13 Counsel requested attorney's fees for work performed before this Court. ECF No.
14 17-4.

Counsel now requests \$30,000 in attorney's fees pursuant to a contingent-fee agreement in which Plaintiff agreed to give Counsel 25% of any past-due benefits award. ECF No. 17-1; see also ECF No. 17-2 (the contingent fee agreement). Counsel further seeks an Order from this Court directing him to reimburse Plaintiff the \$3,414.00 in fees Counsel has previously received under the EAJA. *Id.*

STANDARD

42 U.S.C. § 406(b)(1)(A) provides:

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment

When evaluating a request for a contingent fee under § 406(b), courts must first look to the contingent-fee agreement, then test it for reasonableness. *Gisbrecht v. Barnhart*, 535 U.S. 789, 808 (2002). The following factors, alone or in combination, may warrant a reduction: (1) the result achieved; (2) “substandard representation”; (3) delay by counsel; and (4) whether “the benefits are large in comparison to the amount of time counsel spent on the case,” thereby resulting in a windfall. *Id.* at 805; see also *Crawford v. Astrue*, 586 F.3d 1142, 1151–53 (9th Cir. 2009) (en banc). Courts may request “a record of the hours spent representing the claimant and a statement of the lawyer’s normal hourly billing charge for noncontingent fee cases,” to aid in assessing a fee’s reasonableness. *Gisbrecht*, 535 U.S. at 808; *Crawford*, 586 F.3d at 1151. Counsel bears the burden of establishing that the requested fee is reasonable. *Crawford*, 586 F.3d at 1149.

DISCUSSION

Plaintiff signed a 25% contingent fee agreement, the maximum allowed by Section 406(b). ECF No. 17-2. Nothing in the record suggests that the agreement is invalid. Turning to the reasonableness of the requested \$30,000.00 award, the Court finds that the result was successful and that there is no evidence of substandard representation or delay. The only issue before the Court is the fourth *Gisbrecht* factor, i.e., whether “the benefits are large in comparison to the amount of time [C]ounsel spent on the case” thereby resulting in a windfall. *Gisbrecht*, 535 U.S. at 805.

Counsel submits that his office expended 20.15 hours of attorney and paralegal time, 15.85 hours and 4.3 hours respectively, on the case. ECF No. 17-1, at 8 ¶ 5; ECF No. 17-5. Counsel requests \$30,000.00, or approximately 17.28% of the Plaintiff’s recovered past-due social security benefits, which is less than the maximum \$43,396.25 that the Commissioner withheld pursuant to 42 U.S.C. 406(b). See ECF No. 17-4, at 2. Counsel did not submit his typical non-contingent fee hourly billing rate, but presented evidence that the 95th percentile hourly rate

1 for all attorneys between 2015 and 2016 was \$725 and that he has practiced social
2 security law since 1985. ECF No. 17-1, at 9 ¶¶ 7-8, 8; ECF Nos. 17-6, 17-7. The
3 effective blended attorney/paralegal hourly rate for work performed here is
4 approximately \$1,488.83. Counsel asserts that this hypothetical rate is
5 proportionate to the time spent and, given the results achieved, the relevant market
6 hourly rates, and the risks inherent in contingent-fee arrangements, is not a
7 windfall. ECF No. 17, at 2-6.

8 Given the primacy of lawful attorney-client fee agreements, the amount and
9 complexity of the work performed, the risks assumed, the results achieved,
10 Counsel's experience and efficiency, the effective hourly rates courts have
11 previously approved in similar cases, and the fact that the requested fees are
12 significantly lower than the fees bargained-for in the contingent fee agreement and
13 not excessively large in relation to the benefits achieved, the Court concludes that
14 Counsel has carried his burden to demonstrate that a fee award of \$30,000.00
15 would be reasonable on the facts of this case. See *Crawford*, 586 F.3d at 1151-
16 52. Accordingly, the Court will grant Counsel's present motion and order that the
17 attorney's fee award of \$30,000.00 be paid out of Plaintiff's past-due benefits that
18 have been withheld by Defendant. Since attorney's fees have also been awarded
19 to Counsel pursuant to the EAJA, however, the earlier EAJA attorney's fee award
20 in the amount of \$3,414.00 must be refunded to Plaintiff. See *Gisbrecht*, 535 U.S.
21 at 796 ("Congress harmonized fees payable by the Government under EAJA with
22 fees payable under § 406(b) out of the claimant's past-due Social Security benefits
23 in this manner: Fee awards may be made under both prescriptions, but the
24 claimant's attorney must refund to the claimant the amount of the smaller fee."
25 (internal quotation marks, citation, and alterations omitted)).

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CONCLUSION

Based upon the foregoing, Counsel's motion for attorney's fees (ECF No. 17) is **GRANTED**. The Court awards attorney's fees to Counsel in the amount of \$30,000.00, to be paid out of the sums withheld by Defendant from Plaintiff's past-due benefits. Counsel shall reimburse Plaintiff in the amount of \$3,414.00, the amount previously paid the Government under the EAJA.

IT IS SO ORDERED.

Dated: July 23, 2019

Barry Ted Moskowitz
Honorable Barry Ted Moskowitz
United States District Judge